

1 **(March 13, 1995)**

2 **Execution Of Contract**

3 Section 1-03.3 is supplemented with the following:

4
5 ***Escrow Bid Documentation***

6 **Scope and Purpose**

7 The purpose of this specification is to preserve the Contractor's bid
8 documents for use by the State in any litigation between the State and
9 Contractor arising out of this contract.

10
11 The Contractor shall submit a legible copy of all documentation used to
12 prepare the bid for this contract to a banking institution designated by the
13 State. Such documentation shall be placed in escrow with the banking
14 institution and preserved by that institution as specified in the following
15 sections of this specification.

16
17 **Bid Documentation**

18 The term "bid documentation" as used in this specification means any
19 writings, working papers, computer printouts, charts, and any other data
20 compilations which contain or reflect all information, data, and calculations
21 used by the Contractor to determine the bid in bidding for this project. The
22 term "bid documentation" includes but is not limited to Contractor equipment
23 rates, Contractor overhead rates, labor rates, efficiency or productivity
24 factors, arithmetic extensions, and quotations from subcontractors and
25 materialmen to the extent that such rates and quotations were used by the
26 Contractor in formulating and determining the amount of the bid. The term
27 "bid documentation" also includes any manuals which are standard to the
28 industry used by the Contractor in determining the bid for this project. Such
29 manuals may be included in the bid documentation by reference. The term
30 does not include bid documents provided by the State for use by the
31 Contractor in bidding on this project.

32
33 **Submittal of Bid Documentation**

34 The Contractor shall submit the bid documentation to the banking institution.
35 The bid documentation shall be submitted to the banking institution within
36 seven calendar days after the contract for this project has been executed by
37 the State. The bid documentation shall be submitted in a sealed container.
38 The container shall be clearly marked "Bid Documentation" and shall also
39 show on the face of the container the Contractor's name, the date of
40 submittal, the project title, and the contract number.

41
42 **Affidavit**

43 The sealed container shall contain, in addition to the bid documentation, an
44 affidavit signed under oath by an individual authorized by the Contractor to
45 execute bidding proposals. The affidavit shall list each bid document with
46 sufficient specificity so a comparison can be made between the list and the
47 bid documentation to ensure that all of the bid documentation listed in the
48 affidavit has been enclosed in the sealed container. The affidavit shall show
49 that the affiant has personally examined the bid documentation and that the
50 affidavit lists all of the documents used by the Contractor to determine the bid
51 for this project and that all such bid documentation has been enclosed in the
52 sealed container.

53
54 **Verification**

55 The banking institution upon receipt of the sealed container shall place the
56 container in a safety deposit box, vault, or other secure place, and
57 immediately notify the State in writing that the container has been received.
58 Upon receipt of such notice, the State will promptly notify the Contractor in
59 writing that the State will open the sealed container to verify that the affidavit

has been enclosed and to compare the bid documents listed in the affidavit with the bid documents enclosed in the container to ensure that all of the bid documentation has been submitted and that the copies are legible. The notification will advise the Contractor of the date and time the container will be opened and the name of the State employee who will verify the contents of the container. The State employee verifying the contents of the escrow container will not be involved or connected with the review, evaluation, or resolution of any claim by the Contractor made to the State in connection with the contract for which the verification was made. The Contractor may have representatives present at the opening.

Supplementation

Documents listed in the affidavit but not enclosed in the sealed container through error or oversight shall be submitted in a sealed container within five calendar days after the opening of the original container. Also, any bid documentation that is illegible shall be replaced with legible copies and furnished within five calendar days after the opening of the original container. The face of the container shall show the same information as the original container except the container shall be marked "Supplemental Bid Documentation". The same procedure used in verifying the contents of the original container shall be used in verifying the contents of the supplemental submittal.

Duration and Use

The bid documentation and affidavit shall remain in escrow during the life of the contract and will be returned to the Contractor by the banking institution, provided that the Contractor has signed the final contract voucher certification and has not reserved any claims on the final contract voucher certification against the State arising out of the contract. In the event that claims against the State are reserved on the final contract voucher certification, the bid documentation and affidavit shall remain in escrow. If the claims are not resolved and litigation ensues, the State may serve a request upon the Contractor to authorize the banking institution, in writing, to release the bid documentation and affidavit in escrow to the State. The Contractor shall respond to the request within 20 days after service of the request. If the Contractor objects or does not respond to the request within 20 days after service of the request, the State may file a motion under the Civil Rules requesting the court to enter an order directing the banking institution to deliver the bid documentation and affidavit in escrow to the State. The Contractor shall respond to the request within the time required by the then applicable Civil Court Rules for the Superior Court of the State of Washington. If the Contractor objects or does not respond to the request within the time required by the then applicable Civil Rules, the State may file a motion pursuant to such rules requesting the court to enter an order directing the banking institution to deliver the bid documentation and affidavit in escrow to the State. The banking institution shall release the bid documentation and affidavit as follows:

1. To the State upon receipt of a letter from the Contractor authorizing the release;
2. To the State upon receipt of a certified copy of a court order directing the release of the documents;
3. To the court for an in camera examination pursuant to a certified copy of a court order;

- 1 4. The bid documentation and affidavit shall be returned to the
2 Contractor if litigation is not commenced within the time period
3 prescribed by law.
4

5 The Contractor agrees that the sealed container placed in escrow and any
6 supplemental sealed container placed in escrow contain all of the bid
7 documentation used to determine the bid and that no other bid
8 documentation shall be utilized by the Contractor in litigation over claims
9 brought by the Contractor arising out of this contract unless otherwise
10 ordered by the court.
11

12 **Remedies for Refusal or Failure to Provide Bid Documentation**

13 Failure or refusal to provide bid documentation shall be deemed a material
14 breach of this contract. The State may at its option refuse to make payment
15 for progress estimates under Section 1-09.9 until the Contractor has
16 submitted the bid documentation required by this specification. The State
17 may at its option terminate the contract for default under Section 1-08.10.
18 These remedies are not exclusive and the State may take such other action
19 as is available to it under the law.
20

21 **Confidentiality of Bid Documentation**

22 The bid documentation and affidavit in escrow are and will remain the
23 property of the Contractor. The State has no interest in or right to the bid
24 documentation and affidavit other than to verify the contents and legibility of
25 the bid documentation unless litigation ensues between the State and
26 Contractor over claims brought by the Contractor arising out of this contract.
27 In the event of such litigation, the bid documentation and affidavit may
28 become the property of the State for use in the litigation as may be
29 appropriate subject to the provisions of any court order limiting or restricting
30 the use or dissemination of the bid documentation and affidavit as provided in
31 the preceding section entitled Duration and Use.
32

33 **Cost and Escrow Instructions**

34 The cost of the escrow will be borne by the State. The State will provide
35 escrow instructions to the banking institution consistent with this
36 specification.